

REMARKS

Claims 46, 49-51, 53, 56-62, 65, and 89 are currently pending in the subject application. Applicants have hereinabove amended the priority paragraph and the Brief Description of the Drawings.

Objections to the Specification

In the April 6, 2009 Office Action, the Examiner requested that applicants revise the application to state that it is a continuation-in-part of U.S. Serial No. 09/671,100 and update the status of the applications referenced in the priority sentence of the specification. The Examiner also requested that applicants correct the heading of the section that starts on page 3, line 1 to "Brief Description of the Drawings" instead of "Brief Description of the Figures." The Examiner further requested applicants to correct the description of Figure 19 at page 9, line 30 to page 10, line 6 to "Figures 19A, B and C" to be consistent with the drawing.

Applicants' Response

In response, applicants have hereinabove amended the paragraph starting on page 1, line 5 of the specification, a paragraph which was added to the specification by a Preliminary Amendment filed on October 3, 2003, to update the status of the application recited therein and to note that the subject application is a continuation-in-part of U.S. Serial No. 09/671,100. In addition, applicants have amended the priority paragraph to change the earliest benefit claimed as described hereinbelow.

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Applicants have also hereinabove amended the specification at page 3, line 1 to recite "Brief Description of the Drawings." Applicants have also hereinabove amended the specification at page 9, line 30 to page 10, line 6 to correct the figure description of Figure 19.

Accordingly, applicants respectfully request that the Examiner withdraws the objections set forth in the April 6, 2009 Office Action, and earnestly solicit allowance of the subject application.

**Request to Change the Priority Date of the Subject Application**

The subject application was involved in an interference with U.S. Patent No. 7,238,469, to Bach et al. owned by Beth Israel Deaconess Medical Center, Yale University and Ikaria Holdings, Inc. In accordance with a July 14, 2008 Judgment issued by the United States patent and trademark Office Board of Patent Appeals and Interferences, the owners of the Bach patent conceded priority to Applicants. In the interference, the pending claims of the above-identified patent application were awarded an earliest priority date of April 1, 1999, i.e. the filing date of the PCT International Application PCT/US99/07175. Consistent with this, applicants have hereinabove amended the priority claimed for the subject application to April 1, 1999. Accordingly, applicants submit herewith as **Exhibit A** a new Declaration and Power of Attorney signed by the inventors David J. Pinsky, David M. Stern and Charles J. Prestigiacomo, which reflects the April 1, 1999 priority claimed.

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If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorney invites the Examiner to telephone him at the number provided below.

No fee, other than the fee of \$245.00 for a two-month extension of time, is deemed necessary in connection with the filing of this Amendment and Communication. Accordingly, a check for \$245.00 is enclosed. However, if any additional fee is required, authorization is hereby given to charge the additional amount of any such fee to Deposit Account No. 03-3125.

Respectfully submitted,



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I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to:

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*John P. White* 7/9/09

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